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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,339	08/14/2001	Tokuju Oikawa	2870-0171P	6675
2292	7590	01/30/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			CHEA, THORL	
			ART UNIT	PAPER NUMBER
			1752	

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/928,339

Applicant(s)

OIKAWA, TOKUJU

Examiner

Thorl Chea

Art Unit

1752

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

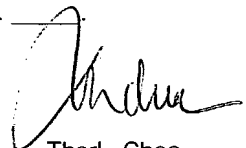
3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
Thorl Chea  
Primary Examiner  
Art Unit: 1752

Continuation of 5. does NOT place the application in condition for allowance because: of the reason set forth in the final office action on August 12, 2003 and the advisory action on November 25, 2003. Upon the complete review of the applicants' argument on January 14, 2004, the Examiner's position remains unchanged. The Declaration fails to show whether the pH of the material of prior art changes with an unacceptable level that would destroy the usefulness of the material. The results shown in Table of the Declaration is related to the showing of the presence of the ammonium ions in the material, rather than showing the constant pH of the material. The Declaration on page 3 shows the content of the ammonium content in the material of the prior art. None of the photothermographic property associated with this amount has been provided. The results in Table 1 are related to the showing as how the amount of  $\text{NH}_4^+$  affected the material presented in the specification disclosure. None of the material in Table 1 made accordingly to the material taught in the applied prior art of record. The issue in this case is as how the  $\text{NH}_4^+$  or the changing of pH affect the desired characteristic of the material of the applied prior art of record, not the material made by the applicants' preferred embodiment. The applicants fail to compare his material to the material of the prior art of record.

The applied prior art of record discloses different pH modifier to adjust the pH of the material (see final office action on page 5) other than the ammonium hydroxide used by the applicants such as hydroxide of alkali metals and alkaline earth metal or non-volatile organic acid, and this pH modifier does not produce the  $\text{NH}_4^+$  ions. It would have been prima facie obvious to select the pH modifier that does not contain the  $\text{NH}_4^+$  group taught in the prior art of record other than  $\text{NH}_4\text{OH}$  as pH modifier used in the sample shown in the specification disclosure. The  $\text{NH}_4^+$  is considered as a by product or impurity rather than an additive for the improvement of the photothermographic material.